



U.S. Army Corps of Engineers, San Francisco District

## MEMORANDUM FOR RECORD

FILE NUMBER: 400075S

PROJECT: Newark Area 3 and 4

DATE: February 19, 2014

SUBJECT: JD re-verification

On July 23, 2013, I met with Pat Boursier to conduct a site visit for the re-verification of the 2007 jurisdictional determination for the site. The project site has been extensively studied by H.T. Harvey and Associates in regard to wetland hydrology and ground water monitoring and Dan Martel, the District's previous wetland specialist had conducted a site visit for the 2007 verification ( See September 19, 2007 site report by Dan Martel). No substantial changes to the project site have occurred on the site since the 2007 verification. However, we did note that there were some areas of vegetation shifts reflecting the drier conditions of the past few years. The wetland delineation should remain the same as the 2007 mapping since wetland areas were monitored and mapped during a period of time with more normal precipitation (e.g. 2005-2006, 91% of average annual total precipitation). The project site is comprised of large parcels that have with the exception of the auto dismantler business (in the northwestern portion of the project site) been in agricultural activity for many years.

*Mapping of Historic Bay Margin:* The map has been revised to include the mapping of the historic bay margin for the compliance with the San Francisco Regional Conditions for Nationwide Permits. The historic bay margin is defined as the areas below the 5' contour line (NGVD) as per the 1971 Nichols and Wright map. However, this 5' contour line differs from the t-sheet mapping of the bay margin. Pat Boursier of H.T. Harvey and I discussed the

difference between these two maps and agreed to map the historic bay margin as depicted on the 1971 Nichols and Wright map.

*Historic Section 10 Jurisdiction pursuant to the Rivers and Harbor Act:* The western portion of the project site is diked bay lands (situated within the historic bay margin) and contains historic Section 10 jurisdiction in the form of double-sided slough channels (see attached Figure 1). There is one remnant slough that still exists in the southwestern corner of the property near the pump. Most of the historic Section 10 double-sided sloughs are no longer visible in aerial photography probably due to ground alterations from the construction of the duck ponds and farming. However, a 1948 aerial of the project site shows the historic tidal sloughs plus additional man-made channels most probably constructed to aid in dewatering the site (Figure 2). There are some channels that appear to have been man-made, probably to dewater the site. However, the fact that the site has never been developed in roads/buildings is sufficient for us to conclude that area encompassed by the historic double sided sloughs have never been above MHW and therefore still jurisdictional pursuant to Section 10 of the Rivers and Harbor Act. These double sided sloughs flowed into Mowry Slough, also navigable water of the U.S. that is a tributary to the San Francisco Bay (see Approved Jurisdictional Determination Form, Section II.A).

*Jurisdictional waters of the U.S. pursuant to Section 404 of the Clean Water Act:* The eastern portion of the project site is situated along the northern boundary of Newark and Fremont Cities (between Addition Road and Stevenson Boulevard and south of Boyce Road). This 77 acre site has been heavily farmed and is comprised of uplands except for a small strip of wetlands that have formed on southern edge due to landscaping irrigation. This wetland area is less than an acre in size and is not considered jurisdictional since ceasing of irrigation would most likely cause the disappearance of the wetlands (see Approved Jurisdictional Determination Form, Section II.B.2).

The two stormwater detention basins constructed to the east of the auto dismantler property are the are not considered jurisdictional because they were are isolated wetland areas (see Approved

Jurisdictional Determination Form, Section II.B.1.a, Isolated waters, including isolated wetlands).

Portion of the large southwestern project site have been further manipulated in the past for the construction of duck ponds. Large portions of the site are mapped as other waters due to long periods of deep inundation that limits the establishment of vegetation. Wetland areas have less surface ponding allowing for the establishment of wetland vegetation. Surface water in the project site is discharged through a pump located on the southwestern corner of the project site directly into Mowry Slough. This pumping is probably the only means by which this large western portion of the project site can be farmed and also establishes a hydrologic connection between the other waters and wetlands and Mowry Slough, a navigable tributary to the San Francisco Bay. The wetlands and other waters on the project site are abutting Mowry Slough (see Approved Jurisdictional Determination Form, Section II.B.1a., wetlands adjacent to TNWs, relatively permanent waters that flow directly or indirectly into TNW, impoundments of jurisdictional waters and Section III, A.2).

#### Impoundment

The Corps should proceed with re-verifying the jurisdictional delineation for the project site annotating the label to clarifying the following: a) wetland vegetation supported by artificial hydrology is non-jurisdictional pursuant to Section 404 of the Clean Water Act; b) non-jurisdictional, isolated wetlands that are storm water detention basins; c) historic double-sided sloughs are jurisdictional pursuant to Section 10 of the Rivers and Harbor Act; and d) wetlands and other waters are jurisdictional pursuant to Section 404 of the Clean Water Act.

---

Katerina Galacatos

---

Date

